IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 58 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARSIBHAI MAGANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 58 of 2002

MR ASHISH M DAGLI for Petitioner No. 1

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR MC BAROT for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/09/2002

ORAL JUDGEMENT

Rule. Mr. P.R. Abichandani, learned APP waives service of notice of rule. At the request of the

parties, matter is taken up for hearing today.

2. The revisioner is one of the accused charge-sheeted under Sections 363, 364, 365 and 114 of IPC in connection with an offence registered with Gandhinagar Sector 21 Police Station C.R No. I-591/2000. On the basis of the FIR, investigation was made and Police submitted a report under Section 169 of Cr.P.C before learned JMFC, Gandhinagar. Learned JMFC by order dated July 19, 2001, accepted the said report and therefore, the original complainant preferred Criminal Revision Application No. 53 of 2001 before Additional Sessions Judge, Ahmedabad Rural at Gandhinagar. The learned Additional Sessions Judge, by judgement and order dated January 3, 2002, partly allowed the revision application and set aside the order of learned JMFC, Gandhinagar, accepting the report of the investigation officer under Section 169 of Cr.P.C and remanded the matter to the learned Magistrate for passing a reasoned and speaking order afresh after hearing all parties. Aggrieved by the said judgement and order, the accused inrespect of whom report under Section 169 of Cr.P.C was made by the investigating agency, has preferred this revision application.

3. Heard learned Advocate Mr. Dagli for the revisioner and learned APP Mr. Abichandani for respondent No.1 and Mr. Barot, learned Advocate for respondent No.2 original complainant.

4. Learned Advocate Mr. Dagli submitted that there is absolutely no evidence; learned Magistrate has considered all relevant papers; however, learned Additional Sessions Judge found that reasons are not recorded by the Magistrate and came to the conclusion that learned Magistrate has acted on the opinion of the investigating officer and therefore, set aside the order, which is not proper; remand of the matter would drag the proceedings unnecessarily and it would drag the revisioner also to a second round of battle without any cause. He therefore urged that revision may be allowed.

5. Learned Additional Public Prosecutor stated that investigating officer is present in the Court and he has gone through the investigation papers. According to Mr. Abichandani, the only piece of evidence against the revisioner is that he owns a scooter which is allegedly used by another accused Sailesh who happens to be son of the revisioner, for commission of the crime.

6. This Court has gone through the investigation

papers as well and as rightly pointed out by Mr. Abichandani, there is no evidence except the ownership of the revisioner of the scooter used by his son Sailesh allegedly for commission of the crime. There is no material to indicate that it was used with the knowledge of the revisioner or under his connivance or with his aid or abetment. Under the circumstances, there is total lack of evidence to connect the revisioner with the crime and the investigating officer was justified in submitting a report under Section 169 of Cr.P.C. Learned Magistrate was also justified in accepting the report.

7. It is true that the order of the learned Magistrate does not reflect in terms that the papers have been gone through or that the case diary has been gone through by him. It is nobody's case that further investigation is required. Learned Advocate Mr. Barot was not in a position to point out any material to connect the revisioner with the crime. Under the circumstances, in the opinion of this Court, the order impugned needs to be interfered with and set aside. The revision is therefore accepted. Order of learned Additional Sessions Judge in Criminal Revision Application No. 53 of 2001, dated January 3, 2002 is hereby set aside and the order of learned JMFC is restored. Rule is made absolute.

(A.L.Dave, J.)

*/Mohandas